Supreme Court, U.S.
FILED

No. (1) 041241 MAR 11 2005
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In The
Supreme Court of the United States

Silver Spur Reserve, a California General Partnership, dba Silver Spur Mobile Manor,
Petitioner and Appellant,

v.

The City of Palm Desert and
the Palm Desert Rent Review Board,
Respondents and Appellees.

The Tenants Residing at Silver Spur Mobile Manor
Real Parties in Interest.

On Petition for Writ of Certiorari
to the California Supreme Court

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

IN GALLAND V CITY OF CLOVIS, 24 Cal. 4th 1003, 103 Cal. Rptr. 2d 711, 16 P. 3d 130 (2001), THE CALIFORNIA SUPREME COURT FOUND THAT THE OWNER OF A RENT CONTROLLED PROPERTY WHO HAS BEEN DENIED ITS CONSTITUTIONAL RIGHT TO A FAIR RETURN ON INVESTMENT CANNOT RECOVER ATTORNEY'S FEES FROM A LOCAL GOVERNMENT UNDER 42 U.S.C. SECTION 1988, UNLESS IT CAN ALSO ESTABLISH THAT "GOVERNMENT AGENTS HAVE DELIBERATELY COMMITTED OBSTRUCTIVE AND UNLAWFUL ACTS DESIGNED TO INTERFERE WITH THE [LANDLORD'S] PROPERTY RIGHTS." THIS CASE SEEKS A DETERMINATION AS TO WHETHER THAT STANDARD IS VIOLATED WHERE GOVERNMENT AGENTS DISOBEY COURT ORDERS, REFUSE TO CORRECT OBVIOUS MATHEMATICAL ERRORS, VOTE ON MATTERS WITHOUT REVIEWING THE EVIDENCE, OPENLY EXPRESS HOSTILITY AGAINST LANDLORDS AND, DURING DELIBERATIONS, CONSIDER AMENDING THEIR RENT CONTROL ORDINANCE TO PREVENT LANDLORDS FROM RECEIVING RENT INCREASES IN THE FUTURE?

LIST OF PARTIES

The Petitioner is Plaintiff and Appellant Silver Spur Reserve, a California General Partnership. The Petitioner is represented by Anthony C. Rodriguez of the Law Office of Anthony C. Rodriguez, 1425 Leimert Boulevard, Suite 101, Oakland, California 94602.

The Respondents are the City of Palm Desert and the Palm Desert Rent Review Commission, represented by Douglas S. Phillips of Best, Best & Krieger, 74-760 Highway 111, Suite 200, Indian Wells, California 92210.

The Real Parties in Interest are "the Tenants residing at Silver Spur Mobile Manor," represented by Michael Zitomer, Esq., 225 S. Civic Drive, Suite 2-14, Palm Springs, California 92262.

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PETITION FOR A WRIT OF CERTIORARI TO REVIEW AN ORDER OF THE CALIFORNIA SUPREME COURT DENYING DISCRETIONARY REVIEW OF THE JUDGMENT OF THE FOURTH DISTRICT COURT OF APPEAL

Petitioner Silver Spur Reserve ("Silver Spur") prays for a writ of certiorari to review an order of the California Supreme Court declining to review the judgment of the Fourth District Court of Appeal of the State of California.

OPINIONS BELOW

The December 15, 2004 order of the California Supreme Court declining discretionary review with respect to the denial of Silver Spur's motion for attorney's fees under 42 U.S.C. § 1988 is included in the Appendix to this petition, at page A-1. The September 20, 2004 decision of the Fourth District Court of Appeal affirming the trial court's denial of Silver Spur's motion for attorney's fees under 42 U.S.C. § 1988 is included in the Appendix to this petition, at pages A-2 through A-28. The November 14, 2003 order of the Riverside County Superior Court denying Silver Spur's motion for attorney's fees under 42 U.S.C. § 1988 is included in the Appendix to this petition at pages A-29 through A-32.

JURISDICTION

The California Supreme Court denied Silver Spur's petition for review on December 15, 2004. This Petition for Certiorari is filed within 90 days of that date. The jurisdiction of this court to review the denial of the petition for review is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

This case involves the denial of attorney's fees under 42 U.S.C. § 1988, following the violation of a constitutional right to a fair return under 42 U.S.C. § 1983. 42 U.S.C. Section 1988 provides as follows:

> "In any action or proceeding to enforce a provision of sections 1981, 1981a, 1982, 1983, 1985 and 1986 of this title, title IX of Public Law 92-318 (20 U.S.C. 1681 et. seq.), the Religious Freedom Restoration Act of 1993 (42 U.S.C. 2000b et seq.), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d et seq.), or section 13981 of this title, the court, in its discretion, may allow the prevailing party, other than the United States, a reasonable attorney's fee as part of the costs, except that in any action brought

> against a judicial officer for an act or omission taken in such officer's judicial capacity such officer shall not be held liable for any costs, including attorney's fees, unless such action was clearly in excess of such officer's jurisdiction.

This case also involves the takings and the due process clauses of the fifth and fourteenth amendments to the United States Constitution. The fifth amendment provides in relevant part as follows:

> "No person shall . . . be deprived of life, liberty or property, without due process of law, nor shall private property be taken for public use, without just compensation."

The fourteenth amendment provides in relevant part as follows:

> "...Nor shall any State deprive any person of . . . property, without due process of law."

STATEMENT OF THE CASE

Silver Spur Reserve is a California partnership ("Silver Spur"). It owns Silver Spur Mobile Manor, a 215 space mobilehome park located in Palm Desert, California. On September 1, 1993, Silver Spur applied for a $64 per month rent

increase, pursuant to the City of Palm Desert's rent control ordinance. (AR 22-37).[1] The City of Palm Desert appointed an attorney named Richard Erwood to act as its administrative hearing officer with respect to Silver Spur's rent increase application. (AR 2 and 21).

In order to establish that a property is not generating a fair return, property owners must usually submit evidence establishing the dollar amount of their investment, their income and expenses, and their rate of return. Of course, property owners must also submit expert testimony establishing that their rate of return is not "fair." Accordingly, at the underlying administrative hearings in this case, Silver Spur submitted ***all*** of the evidence necessary to establish that it required a $62 rent increase in order to receive a fair return on investment, including the expert report and testimony of Dr. Richard Fabrikant regarding rates of return. (AR 20-747, 909-1491 and

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1 All references to "AR" are to the administrative record from the underlying administrative proceedings. All references to "CT" are to the Clerk's Transcript on Appeal. All references to "RT" are to the Reporter's Transcript on Appeal.

1511-1579). That evidence is summarized as follows:

$6,859,789	Inflation Adjusted Investment (AR 1527, 981)
× 10.74%	Fair Rate of Return (AR 1530, 1511-1579)
$736,741	***1992 Return Required (AR 1530)***
($576,784)	1992 Actual Return (AR 986 and 1540)
$159,957	1992 Return Deficiency (AR 1530)
÷ 215	Spaces (AR 1530)
÷ 12	Months (AR 1530)
.$62.00	***Increase Per Space Per Month (AR 1530)***

On June 13, 1994, the hearing officer issued a decision with respect to Silver Spur's rent increase application. (AR 2593-2617). In that decision, the hearing officer found that the evidence was insufficient to support any rent increase at all. (AR 2613, line 21 through AR 2614, line 15). In addition, the hearing officer made a mathematical error, falsely concluding that Silver Spur had understated its profits by $498,170. (AR 2615, lines 9-18). Although this is the type of mathematical error that may *initially* have been due to "agency confusion," the City of Palm Desert's repeated refusal to address this error, as well as its other actions involving Silver Spur's rent increase application, demonstrate that the City had no intention of granting Silver Spur a $62 rent increase, unless ordered by a

court to do so.

With respect to the hearing officer's initial mathematical error, the uncontradicted evidence showed that in 1992 Silver Spur had gross income of $949,839 and expenses (not including debt service) of $373,055. (AR 1540). Thus, *before* taking debt service into account, Silver Spur had a "net operating income" of $576,784. The uncontradicted evidence also showed that in 1992 Silver Spur's debt service payments totaled $498,170. (AR 1541). Thus, ***after*** taking debt service into account, Silver Spur had a "profit" of only $78,614, calculated as follows:

$949,839	1992 Gross Revenues (AR 1540)
($373,055)	1992 Expenses (AR 1540)
$576,784	*1992 Net Operating Income* (AR 1540)
($498,170)	1992 Debt Service (AR 1541)
$78,614	*1992 Profit* (AR 1540-1541)

Although Silver Spur's financial statement clearly showed that it had ***not*** included its $498,170 in debt service payments as an "expense" in calculating its 1992 ***net operating income***, the hearing officer erroneously concluded that it had. The hearing officer then compounded his error by finding that if Silver Spur had not included debt service as an expense, its

net operating income would have been $1,074,954, instead of $576,784. ($576,784 + $498,170 = $1,074,954). (AR 2615, lines 9-15). The hearing officer further compounded his error by finding that because $1,074,954 exceeded the $736,741 "minimum" net operating income required to provide a fair return that had been established by Dr. Fabrikant, Silver Spur was not entitled to any rent increase at all. (AR 2617, lines 9-11).

There was no evidence anywhere in the record that either Silver Spur's 1992 net operating income or its profits were anywhere near $1,074,954. To the contrary, because Silver Spur's ***gross revenues*** for the entire year were only $949,839, it was mathematically impossible for Silver Spur's "profits" to have been $1,074,954, because "profits" can ***never*** exceed gross revenues. (AR 1540-1541). [2]

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[2] See Black's Law Dictionary, Fifth Edition, which defines "profit" as follows:

> "Profit: Most commonly, the gross proceeds of a business transaction ***less*** the costs of the transaction, i.e., net proceeds. Excess of revenues over expenses..." (Emphasis added).

On June 24, 1994, Silver Spur filed an appeal to the full Rent Review Board, specifically pointing out that the hearing officer had made a $500,000 mathematical error in rendering his decision. (AR 2641, line 22 through AR 2642, line 15; AR 1540-1541). However, the Rent Review Board did not even mention the hearing officer's $500,000 mathematical error in its decision, let alone correct it. Instead, the Rent Review Board simply affirmed the hearing officer's findings, ruling that the evidence was insufficient to support any rent increase at all. (AR 2879). (AR 2634 and AR 2732, line 25 through 2733, line 12).

On February 24, 1995, Silver Spur filed a petition for a writ of administrative mandamus with the Riverside County Superior Court, on the ground that the City's decision had deprived it of a fair return on investment, in violation of its constitutional rights. (CT 97-110). A hearing was set before Judge Fry of the Riverside County Superior Court for November 15, 1996. In its trial brief, Silver Spur set forth the various theories justifying the requested rent increase and again demonstrated that the hearing officer had made a $500,000 mathematical error. (CT 111-140 at 136, line 12 through 137, line

10). The City was represented in the Superior Court proceedings by Douglas Phillips, the same attorney who had represented the Rent Review Board in the underlying administrative proceedings. (CT 142). In his opposition brief, the City Attorney argued that the hearing officer had applied an "historic cost" analysis in rejecting Silver Spur's rent increase application, when in fact the hearing officer had never made such an analysis and no evidence had ever been offered in support of such an analysis. (CT 161, lines 19-22). In its reply brief, Silver Spur strongly objected to the City Attorney's attempt to attribute findings to the hearing officer which were in fact never made by the hearing officer. (CT 181, line 27 through 182, line 10).

After extensive oral argument regarding both the hearing officer's "mathematical error" and the propriety of the City Attorney's attempt to raise the so-called "historic cost" approach for the first time on appeal, Judge Fry remanded the matter back to the Rent Review Board. So as to guarantee that the Rent Review Board would not be improperly influenced by the City Attorney's newly raised argument regarding the so-

called "historic cost" approach, Judge Fry specifically ruled that the Rent Review Board could ***not*** consider any additional information on remand, including the brief prepared by the City Attorney regarding the so-called "historic cost" approach. (CT 193, line 20 through 195, line 21).

At that point, the City Attorney asked Judge Fry if he could at least provide the Rent Review Board with "the transcript" from that November 15, 1996 hearing. (CT 195, lines 11-13). Judge Fry sustained Silver Spur's objections to that request, because providing that transcript would simply be another way for the City Attorney to improperly influence the Rent Review Board regarding his newly raised "historic cost" approach. (CT 195, lines 16-21 and CT 198-200).

On April 3, 1997, the Rent Review Board met pursuant to Judge Fry's remand order. At that hearing, the hearing officer made it clear that he had been provided a copy of the November 15, 1996 Superior Court "transcript," in direct violation of Judge Fry's ruling. At that same time, the hearing officer also made it clear that he understood that his $500,000 mathematical error was one of the key issues before the

Superior Court. (CT 202-204).

On May 6, 1997, the hearing officer issued his amended decision. Although the hearing officer had previously acknowledged that his "mathematical error" was of keen importance in the case, he did not address that "mathematical error" in his amended decision. (AR 2641, line 22 through AR 2642, line 15; See also AR 1540-1541). Rather, the hearing officer again ruled there was not enough evidence to justify any rent increase at all. (CT 205 through 211, at CT 211, lines 8-9).

On May 15, 1997, the Rent Review Board conducted still another hearing, so as to review the hearing officer's amended decision. At the conclusion of the May 15, 1997 hearing, the Board simply reaffirmed the hearing officer's amended decision. Again, however, the Board's amended decision failed to address, let alone correct, the hearing officer's $500,000 "mathematical error." (CT 216-218 at CT 217, line 21 through CT 218, line 2).

On January 23, 1998, Judge Fry conducted a hearing regarding the City's violation of his previous order regarding the City's use of the Superior Court transcripts on remand. (CT

702-708). When the City attempted to argue that it had not intentionally violated his order, Judge Fry indicated the City's argument was not "in good faith" and that he was "really offended" by the City's position. (CT 709, lines 16-28).

On June 3, 1998, Judge Fry issued a judgment, overturning the previous *four* decisions of the hearing officer and the Rent Review Board and concluding that a $58.33 rent increase was required to provide Silver Spur with a fair return on investment. (CT 219 and CT 220-222). Unlike the previous decisions of the hearing officer and the Board, Judge Fry also found that Silver Spur had submitted sufficient evidence to support its rent increase application, and that the hearing officer had failed to consider the evidence that was submitted. (CT 222, lines 1-11).

On July 13, 1998, the Rent Review Board conducted a hearing to determine whether to abide by Judge Fry's decision to grant Silver Spur a $58.33 rent increase. Before that hearing began, the Board swore in a new member, Donald Moran, who admitted that he was not familiar with the issues and was therefore not in a position to vote on the matter at that time.

(CT 445, line 20 through CT 446, line 1).

After Commissioner Moran was sworn in, the Board did not vote on whether to abide by Judge Fry's order at that time. Rather, the Board's first reaction was to discuss ways to amend the ordinance, so as to prevent other parkowners from receiving rent increases similar to that ordered by Judge Fry. (CT 450, lines 3-21).

Next, although Commissioner Moran had already admitted that he was not familiar with the issues, he then decided that he was going to vote on whether to abide by Judge Fry's order after all. (CT 504, lines 1-15). At that time, Commissioner Moran openly expressed his hostility toward Silver Spur as follows:

> COMMISSIONER MORAN: I know how it is to live in a mobile home. Although I don't live in one, my mother does. My mother is an elderly lady, and I appreciate the fact that she lives in a park that's well-run. I appreciate the fact that ***she lives in a park where the owner is concerned about the well-being of the people that live there***. (CT 510, lines 1-10).

(Emphasis added). [3]

When Silver Spur's attorney objected to Commissioner Moran's statements, the Chairman of the Board again expressed his own hostility toward the parkowners, making a gratuitous comment about Silver Spur's alleged "deep, deep pockets." (CT 519, lines 4-13). Commissioner Moran went much further, however, attempting to intimidate Silver Spur's attorney by seeking his hotel room number, to "discuss" the matter after the hearing was over. (CT 519, line 11 through CT 521, line 10).

Because the Board declined to follow Judge Fry's order at the July 13, 1998 hearing, a second hearing was conducted on July 17, 1998. (CT 526-617). That second hearing began with the Board and the City Attorney engaging in a prolonged discussion regarding possible ways to avoid implementing Judge Fry's decision, including refusing to obey Judge Fry's order altogether. (CT 540, line 24 through CT 541, line 10).

After being advised that the Board could suffer serious

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[3] After previously admitting he was not familiar with the case, Commissioner Moran voted not to abide by Judge Fry's order granting Silver Spur a $58.33 rent increase. (CT 512, line 13 through CT 513, line 17).

consequences if it violated Judge Fry's order, the Chairman of the Board expressed his confidence that there would be no such repercussions, stating he was not "in the least bit worried that the court" would sanction the Board. (CT pg. 542, lines 15-17).

At that point, the City Attorney and the Board also considered avoiding compliance with Judge Fry's order by arguing that the individual Board members had not been personally served with Judge Fry's order, even though the City Attorney had already acknowledged receipt of service of that order on June 19, 1998. (CT 542, line 23 through CT 543, line 3). In order to avoid such an argument, Silver Spur personally served each Board member, on the record. (CT 569, line 15 through CT 570, line 7). Immediately after being served, Chairman Adams admitted that he had "already seen a couple of copies of it," further demonstrating that the Board's actions were not the result of "bureaucratic bumbling," but a deliberate attempt to obstruct Silver Spur's ability to obtain rent increases that it was otherwise entitled to. (CT 570, lines 4-6). At the conclusion of the July 17, 1998 hearing, the Board reluctantly voted to abide by Judge Fry's order allowing Silver Spur to raise

rents by $58.33 per month. (CT 611, line 3 through 613, line 16).

On November 12, 1998, Silver Spur filed its motion for attorney's fees and costs with the Riverside County Superior Court. On January 13, 1999, Judge Fry awarded Silver Spur attorney's fees in the sum of $85,501, based on the City's violation of its constitutional right to a fair return. (CT 619 -620, at 620, lines 3-9). On January 29, 1999, the City appealed Judge Fry's award of attorney's fees to the Fourth District Court of Appeal. (CT 399-403).

While the City's appeal was pending, the California Supreme Court issued its decision in Galland v. City of Clovis, 24 Cal 4th 1003 (2001). Accordingly, the Fourth District Court of Appeal remanded Silver Spur's motion for attorney's fees to the Superior Court for reconsideration in light of Galland. (CT 645 through 653).

Pursuant to the Fourth District Court of Appeal's remand order, Silver Spur filed a second motion for attorney's fees with the Riverside County Superior Court on June 14, 2002. (CT 409-430). At the hearing on that motion, Judge Fry recused himself from further participation in the case. (CT 721). Then,

on April 28, 2003, the presiding judge inexplicably recused every single judge in Riverside County from participating in the case. (CT 731 - 734, at 734, lines 8 through 9).

On May 13, 2003, the matter was transferred to Judge Robert Drake, of the San Bernardino County Municipal Court. (CT 736). At the hearing before Judge Drake, the City Attorney, who was also the attorney for the supposedly neutral Rent Review Board, admitted that his job was *not to be fair* to Silver Spur, stating as follows:

> CITY ATTORNEY: ***[I]s the city attorney's position simply to be a judge and be fair and impartial*** and second guess the board and say, you know, board, I don't think your right. I'm not going to really advocate and I'm not really going to support your position before the superior court. ***Well, I don't think so.*** (RT 39, lines 13-20). (Emphasis added).

On October 7, 2003, Judge Drake issued his ruling, denying Silver Spur's motion for attorneys fees in its entirety, finding that the City's conduct, "however distasteful," did not warrant an award of attorney's fees under 42 U.S.C. Section

1988 and/or the California Supreme Court's decision in Galland. (A-31 through A-32). On September 29, 2004, the Fourth District Court of Appeal affirmed Judge Drake's decision. (A-28). On December 15, 2005, the California Supreme Court denied Silver Spur's petition for review. (A-1).

Unless Judge Drake's ruling is reversed, Silver Spur must return to an openly hostile Rent Review Board to seek more than $1,000,000 in "back" rents now owing in this case, with ***no*** protection whatsoever from the treatment it has endured during the past twelve years. To the contrary, the Rent Review Board will only be emboldened, if it knows its conduct will later be deemed "inadvertent errors" or "honest mistakes." Because the evidence demonstrates that the City's agents "deliberately committed obstructive and unlawful acts designed to interfere with [Silver Spur's] property rights," the decision denying Silver Spur's attorney's fees under 42 U.S.C. Section 1988 must be reversed.

LEGAL ARGUMENT

A. SILVER SPUR IS ENTITLED TO ITS ATTORNEY'S FEES UNDER 42 U.S.C. SECTION 1988

Under 42 U.S.C. Section 1988, a party is entitled to recover its attorney's fees and costs if it establishes a violation of its constitutional rights under 42 U.S.C. Section 1983. An award of attorney's fees is appropriate in ***all*** types of actions involving the violation of constitutional rights, not merely those involving invidious discrimination. Maine v. Thiboutot, 448 U. S. 1, 10 (1980). In fact, the courts have specifically held that a party may recover attorney's fees from a city if the party successfully challenges the unconstitutional application of a municipal ordinance. Aware Woman Clinic v. City of Cocoa Beach, 629 F. 2d 1146, 1148-1149 (5th Cir. 1980).

A party is entitled to attorney's fees under 42 U.S.C. Section 1988 if the judgment is entered in its favor, even though the party does not prevail on its entire claim. Bly v. McLeod, 605 F. 2d 134, 137 (4th Cir. 1979). Thus, where a party has established a violation of its constitutional rights, the court has little discretion to deny an award. As stated by this Court in New York Gaslight Club v. Carey, 447 U. S. 54, 68 (1980):

> "...the court's discretion to deny a fee award to a prevailing

> Plaintiff is narrow. Absent 'special circumstances' fees should be awarded."

In Galland v. City of Clovis, 24 Cal. 4th 1003 (2001), the owner of a mobilehome park sought attorney's fees pursuant to 42 U.S.C. Section 1988, based on the violation of two distinct constitutional rights. First, the parkowner alleged that the mere failure to provide a fair return resulted in a "taking," warranting an award of attorney's fees. (Id. at 1020). Second, the parkowner alleged that the City's bad behavior in ruling on the application resulted in a separate violation of his rights under the due process clause, providing a separate basis for an award of attorneys fees. (Id. at 1020). The Galland Court found that a parkowner could rarely, if ever, establish a right to attorneys fees based on the denial of a fair return under the "takings" clause. The Galland Court reasoned that if the parkowner ultimately establishes his right to a fair return in state court, there has been no "taking," and therefore no right to attorneys fees. (Id. at 1021-1028).

On the other hand, the Galland Court found that a parkowner could establish a right to attorneys fees under the

due process clause. In order to do so, a parkowner must establish that the denial of a fair return was not due to "[i]nadvertent errors, honest mistakes, agency confusion, [or] negligence in the performance of official duties." (Id. at 1034). Rather, a parkowner must establish that the government or its agents intentionally obstructed its ability to obtain a fair return:

> "To succeed in a § 1983 suit for damages for a substantive due process violation, a Plaintiff must at least show that state officials are guilty of grave unfairness in the discharge of their legal responsibilities."
>
> . . .
>
> In cases such as the present, a deliberate flouting of the law may be said to have occurred if the City's . . . [actions were designed to] ***obstruct or discourage landlords from either requesting or obtaining reasonable rent increases to which they are constitutionally entitled.***
>
> . . .
>
> In determining whether a constitutional injury has taken place, we follow the path of the United States Supreme Court, and other courts in asking whether government agents have ***deliberately committed obstructive and unlawful acts designed to interfere with the [the***

parkowner's] property rights.
(Id. at 1034, 1036, 1039-1040).

The primary issue to be decided in this case is whether the City's actions can fairly be deemed the "honest mistakes" of a neutral agency, or whether they constitute deliberate acts by government agents, aimed at "discourag[ing] landlords from either requesting or obtaining reasonable rent increases to which they are constitutionally entitled." (Id. at 1036). A review of the facts and the established law demonstrate that the City's actions were not inadvertent mistakes, but the result of a deliberate attempt to discourage or prevent Silver Spur from receiving a legitimate and constitutionally mandated rent increase. Accordingly, Silver Spur must be allowed to recover its attorney's fees under 42 U.S.C. Section 1988 and/or the standards established by the California Supreme Court in Galland. The "deliberate" acts of the City of Palm Desert are summarized below:

(i.) **Deliberate Disrespect For Court Orders**: A party to administrative writ proceedings may not raise issues in the Superior Court that were not raised at the administrative

hearing. Bohn v. Watson, 130 Cal. App. 2d 24, 36-37 (1954). In addition, if a party disagrees with a court order its remedy is to appeal, not to disregard the court's authority. In Re: Charboneau, 42 Cal. App. 3d 505, 514 (1974).

In this case, the City Attorney raised arguments about the so-called "historic cost" approach in the Superior Court that were never raised at the administrative level. When Judge Fry issued an order prohibiting the hearing officer and the Rent Review Board from being apprised of those new arguments, the City blatantly and unapologetically violated that order.

The only possible reason for the City to raise those new arguments, or to violate Judge Fry's order, was to help the tenants avoid a rent increase to which Silver Spur was constitutionally entitled. When the City attempted to justify its violation of his order, Judge Fry indicated that the City's defense was "in bad faith." (CT 709, lines 16-28).

Moreover, when Judge Fry finally awarded Silver Spur a rent increase, the Rent Review Board discussed a variety of ways to avoid that order, ranging from claiming it had not been served to simply disregarding it. (CT 540, line 24 through CT

541, line 5). When confronted with the possibility of being held in contempt for violation of Judge's Fry's order, the Chairman of the Rent Review Board brazenly declared he was "not in the least bit worried that the court" would sanction the Board. (CT pg. 542, lines 15-17).

The above described acts do not support a finding that the City's failure to provide a rent increase was due to "honest mistakes" or "inadvertent errors" by an otherwise fair agency. Rather, the above acts constitute substantial evidence of the City's deliberate attempt to prevent or discourage Silver Spur from receiving legitimate rent increases, in violation of Silver Spur's constitutional rights. Of course, Silver Spur's position on this issue was bolstered substantially by the attorney for the supposedly neutral Rent Review Board, when he boldly stated at the hearing before Judge Drake that his job was not to be fair or neutral with respect to Silver Spur: (RT 39, lines 13-20).

(ii.) Other Deliberate Acts In Favor of Tenants and Against Parkowners: As demonstrated above, one member of the Board voted against the rent increase, even though he had not reviewed the record, because he thought the owner of his

mother's mobilehome park cared more about his tenants than the owner of Silver Spur. See English v. City of Long Beach, 35 Cal. 2d 155, 158-159 (1950); LeStrange v. City of Berkeley, 210 Cal. App. 2d 313, 325 (1962). That same member then threatened to come to the hotel room of Silver Spur's attorney, presumably because he wanted to fight or argue over the case, thereby becoming personally embroiled in the matter. See Menning v. City Council, 86 Cal. App. 3d 341, 351 (1978); Appelbaum v. Board of Directors, 104 Cal. App. 3d 648, 659-660 (1980).

Another member of the Board immediately inquired about amending the ordinance as soon as Silver Spur was awarded a rent increase, so as to prevent other parkowners from recovering similar rent increases. That same member also considered contesting service in order to avoid complying with Judge Fry's order, even though he later admitted that he had seen several copies of the court's order and was not in the least bit concerned about being punished for violating that order.

None of the above described acts are consistent with a finding that the City's failure to grant a rent increase (on four

separate occasions) was the result of "inadvertent errors" or "honest mistakes" by an otherwise fair agency. Rather, each of the above acts demonstrate that the City was committed to preventing Silver Spur from receiving a rent increase, even after being ordered by a court to do so.

(iii) Refusal To Provide Findings of Fact Regarding Obvious "Mathematical Errors": An administrative agency "must set forth findings to bridge the analytic gap between the raw evidence and [the] ultimate decision or order," thereby enabling a reviewing court to trace "the analytic route the administrative agency traveled from evidence to action." Topanga Assn. for a Scenic Community v. County of Los Angeles, 11 Cal. 3d 506, 515 (1974). As is evidenced by Judge Fry's granting of a $58.33 rent increase, Silver Spur submitted all of the evidence necessary to support its rent increase application at the very first administrative hearing in this matter. Although the hearing officer and the Board repeatedly found that Silver Spur had not submitted sufficient evidence to justify a rent increase, they repeatedly refused to identify how Silver Spur's evidence was lacking.

More specifically, although both the hearing officer and the Board were apprised of the $500,000 "mathematical error," they refused to discuss that error in any of their subsequent decisions, despite having at least three opportunities to do so. Because there was sufficient evidence to rule on the application, and because the hearing officer's "mathematical error" was repeatedly explained to both the hearing officer and the Board, their continuing refusal to provide specific findings regarding either of those issues again supports the conclusion that the failure to grant a rent increase was not due to an "innocent mistake," but ā deliberate attempt to prevent Silver Spur from receiving a fair return.

B. THE PETITION FOR A WRIT OF CERTIORARI MAY BE GRANTED UNDER SUPREME COURT RULE 10

Silver Spur recognizes that a petition for a writ of certiorari may only be granted for compelling reasons. Silver Spur also recognizes that a petition will rarely be granted where the asserted error consists primarily of a misapplication of the law to the facts. However, due to a procedural quandary

created by the California Supreme Court's decision in Galland v. City of Clovis, 24 Cal. 4th 1003, 1040 (2001), Silver Spur has found itself in a position where it appears it must fully exhaust its appeals, or risk being deemed to have "waived" its right to seek additional rent increases from the Palm Desert Rent Review Board under the due process clause.

In Galland, the California Supreme Court found that even if a landlord is not entitled to attorney's fees under 42 U.S.C. Section 1988, the landlord is "not necessarily without a remedy." (Id. at 1040) Specifically, the California Supreme Court found that if it is ultimately determined that the government's actions did "not rise to a deliberate flouting of the law," a landlord may then attempt to recover its attorney's fees and costs in the form of a rent increase from its tenants, if necessary to secure a "fair return" under the due process clause. (Id. at 1040). Of course, in order to recover its attorney's fees in the form of a rent increase under the due process clause, the landlord must appear before the very agency it previously accused of deliberately "flouting the law," and request that agency to order the tenants to pay that rent increase.

Unfortunately, the California Supreme Court has provided no guidance as to how far a landlord must go in attempting to demonstrate that the government "deliberately flouted" the law before seeking its attorney's fees in the form of a rent increase under the due process clause. As a result, Silver Spur is concerned that if it does not completely exhaust its appeals with respect to its claim for attorney's fees under 42 U.S.C. Section 1988, the tenants will argue, and the City of Palm Desert Rent Review Board will agree, that Silver Spur has "waived" its right to seek its attorney's fees from the tenants in the form of a rent increase.[4] Because it is unclear whether Silver Spur must exhaust its appeals all the way to the United States Supreme Court in order to avoid a finding that it has "waived" its right to seek its attorney's fees from its tenants under the due process clause, Silver Spur has filed this petition not only to obtain review of the decisions of the California courts, but also to attempt to overcome the procedural quandary that appears

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[4] It should be noted that Judge Tranbarger and the attorney for the City of Palm Desert also recognized this procedural quandary in the Superior Court proceedings, with Judge Tranbarger concluding: "Who wants to say why this is a good idea." (RT pg. 3, line 3-pg. 4, line 27).

to have been created by the California Supreme Court's decision in Galland.

CONCLUSION

The City's repeated denial of Silver Spur's rent increase application was not the result of "inadvertent errors" or "honest mistakes." Because the City did not act as a fair and neutral arbiter of disputes between landlords and tenants, but deliberately attempted to prevent Silver Spur from recovering rent increases to which it was constitutionally entitled, Silver Spur is entitled to its attorney's fees under 42 U.S.C. Section 1983 and/or the "due process" standards established by the California Supreme Count in Galland v. City of Clovis.

March 9, 2005 Respectfully submitted,

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